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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 WILLIAM J. AUSTIN,

12 Petitioner,

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14 v.

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16 JAMES TILTON, Secretary,

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18 Respondent.
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Civil No. 07cv2159-DMS (RBB)

ORDER:

**(1) DIRECTING CLERK TO FILE A
COPY OF THE PETITION IN THIS
MATTER AS AN ORIGINAL
APPLICATION TO FILE A
SUPPLEMENTAL PETITION IN
So. DIST. CA. CIVIL CASE NO.
05cv1303-LAB (CAB); AND,**

**(2) DISMISSING CASE
WITHOUT PREJUDICE**

20 Petitioner, a state prisoner proceeding pro se, has filed a Petition for a Writ of Habeas
21 Corpus pursuant to 28 U.S.C. § 2254. Petitioner claims his federal due process rights were
22 violated by the manner in which his sentence was calculated. (Pet. at 6.) Petitioner is currently
23 proceeding with a Petition for a Writ of Habeas Corpus challenging the same conviction and
24 sentence which is the subject of the instant Petition. (See Petition filed 6/27/05 [Doc. No. 1] in
25 So. DIST. CA. CIVIL CASE NO. 05cv1303-LAB (CAB).) On June 22, 2007, the assigned
26 Magistrate Judge in that case filed a Report and Recommendation ("R&R") which recommended
27 denying the Petition on the merits of the claims presented. (See R&R filed 6/22/07 [Doc. No.
28 50] in So. DIST. CA. CIVIL CASE NO. 05cv1303-LAB (CAB).) Petitioner filed Objections to the

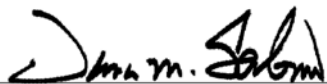
1 R&R on July 27, 2007, and the matter is currently pending before the assigned District Judge.
2 (See Objections filed 7/27/07 [Doc. No. 52] in SO. DIST. CA. CIVIL CASE NO. 05cv1303-LAB
3 (CAB).)

4 Because Petitioner is attempting to present a new claim which arises from and is directly
5 related to the conviction and sentence which he is currently attacking in SO. DIST. CA. CIVIL
6 CASE NO. 05cv1303-LAB (CAB), the instant Petition appears to be an attempt by Petitioner to
7 file a supplemental petition in SO. DIST. CA. CIVIL CASE NO. 05cv1303-LAB (CAB).

8 Accordingly, the Clerk of the Court is **DIRECTED** to file a copy of the original Petition
9 in the instant case as an Application to File a Supplemental Petition in SO. DIST. CA. CIVIL CASE
10 NO. 05cv1303-LAB (CAB). The Court **DISMISSES** the instant action without prejudice to
11 Petitioner to proceed with his claims in SO. DIST. CA. CIVIL CASE NO. 05cv1303-LAB (CAB).

12 **IT IS SO ORDERED.**

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14 DATED: November 15, 2007

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16 _____
17 HON. DANA M. SABRAW
18 United States District Judge

19 CC: PETITIONER IN PRO SE
20 UNITED STATES MAGISTRATE JUDGE RUBEN B. BROOKS
21 UNITED STATES MAGISTRATE JUDGE CATHY ANN BENCIVENGO
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